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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Sunil Kumar Sinha, J.

Writ Petition No. 144 of 2005

Petitioner : LP Paswan, S/o Shri Ramlagan Paswan, Aged about 61 years, Occupation - service, presently working as Assistant Teacher, Primary School Karathi, R/o Village & PO Bhanupratappur, District Kanker (CG)

Versus

Respondents

1. State of Chhattisgarh Through : the Secretary, Department of SC ST Other Backward Class & Other Minority Communities Welfare Department, Mantralaya, DKS Bhawan, Raipur (CG)
2. Assistant Commissioner, Tribal & Welfare Department, Kanker (CG)
3. Collector, District Kanker (CG)
4. Block Education Officer, Bhanupratappur, District Kanker (CG)
5. Head Master, Primary School Karathi, Bhanupratappur, District Kanker (CG)

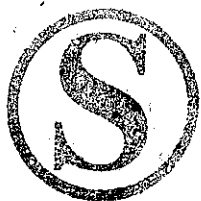
Writ Petition under Article 226/227 of the Constitution of India

Present : Smt Fouzia Mirza, counsel for the petitioner.
Shri Ajay Dwivedi, Panel lawyer for the State.

ORAL ORDER

(Passed on 01st November, 2007)

The petitioner who was working as Assistant Teacher and retired during the pendency of the writ petition on 31st January, 2006 has filed this writ petition challenging the



validity of the order dated 25.12.2004 (Annexure-P/6) by which a consent was sought from the petitioner for recovery of certain amount which was paid to him in lieu of his second time-bound promotion.

Learned counsel for the petitioner argues that no wrong payments were made to the petitioner and therefore, recovery cannot be made on the said count.

Return has already been filed by the State. Learned counsel for the State contended that till today no recovery order has been issued to the petitioner and in pursuance of the order dated 25.12.2004, State is not going to initiate any recovery proceedings. He also contended that as per the pleadings of the return in paragraph 2, the petition is premature and the same is filed merely on apprehensions.

During the course of arguments, Smt. Fouzia Mirza takes me through paragraph 4 of the return in which it has been mentioned that after retirement of the petitioner on 31.01.2006, entire retiral dues of the petitioner have already been paid except 10% of the gratuity: the provisional pension of the petitioner of 90% has also been fixed & 10% remaining pension as well as gratuity amount will be paid as and when the matter is finalized by the High Court and after obtaining instructions or order from the Treasury, Account & Pension department. She further submits that this 10% amount has been withheld with an



intention of recovery in pursuance of the order dated 25-12-2004 for which the petitioner is not liable.

This argument does not appear to be appealing because it has been mentioned in the return that the amount has been withheld on account of pendency of the petition of the petitioner, therefore, for the time being apprehension of the petitioner appears to be baseless. In view of the agreed position that presently no recovery is pending against the petitioner ^{and} for the time being, ~~and~~ the Government is not going to make any recovery against him, I am not inclined to permit the prosecution of this petition any more and it is the time when the proceedings ^{of} ~~against~~ the petitioner should be dropped. Accordingly, this petition is disposed of in view of the return filed by the Government and also on the ground that no recovery is pending /proposed against the petitioner as on today. However, the petitioner shall be at liberty to visit this Court again if any recovery in pursuance to order date 25.12.2004 is made/proposed to be made against him.

In the facts and circumstances, particularly on the basis of the pleadings of the Government it is expected that the order dated 25.12.2004 shall not come in the way of the Government to make final payment to the petitioner.

Sd/-
SUNIL KUMAR SINHA
Judge